

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JUAN CABANAS-TOLDEO

*Plaintiff,*

V.

ALLIED PROPERTY AND CASUALTY  
INSURANCE COMPANY;


PAMELA C. COOPER

(a) Individually, (b) as Trustee of Bill R. Hablinski, (c) as Trustee of the Bill R. Hablinski Living Trust, (d) as Representative/Administrator of the Estate of Bill R. Hablinski, (e) as Beneficiary of the Estate of Bill R. Hablinski, and (f) as Next of Kin of Bill R. Hablinski;

DEFENDANT THE ESTATE OF BILL R.  
HABLINSKI;

DEFENDANT BILL R. HABLINSKI

*Defendant.*



CIVIL ACTION NO. 4:16-cv-2297

## **NOTICE OF REMOVAL**

Defendant Allied Property and Casualty Insurance Company (“Allied”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this Notice of Removal of the lawsuit captioned *Juan Cabanas-Toledo v. Allied Property and Casualty Insurance Company; Pamela C. Cooper (a) individually, (b) as Trustee of Bill R. Hablinski, (c) as Trustee of the Bill R. Hablinski Living Trust, (d) as Representative/Administrator of the Estate of Bill R. Hablinski, (e) as Beneficiary of the Estate of Bill R. Hablinski, and (f) as Next of Kin of Bill R. Hablinski; Defendant The Estate of Bill R. Hablinski; Defendant Bill R. Hablinski*; Cause No. 2015-45557, in the 125th Judicial District of Harris County, Texas.

**I.  
BACKGROUND**

1. Plaintiff Juan Cabanas-Toledo (hereinafter “Plaintiff”) initiated the present action by filing his Original Petition, Jury Demand and Initial Discovery in Cause No. 2015-45557, in the 125th Judicial District of Harris County, Texas on August 8, 2015 (the “State Court Action”). *See* Plaintiff’s Original Petition, attached as **Exhibit A**. Plaintiff joined Allied to this action by filing his First Amended Petition, Jury Demand and Discovery on May 17, 2016. *See* Plaintiff’s First Amended Petition, attached as **Exhibit B**. Plaintiff voluntarily dismissed all other defendants but for Allied with the filing of his Notice of Non-Suit Regarding the Non-Insurance Defendants on May 18, 2016. *See* Plaintiff’s Notice of Non-Suit Regarding the Non-Insurance Defendants, attached as **Exhibit C**.

2. Allied appeared and answered on July 29, 2016, asserting a general denial to the claims and allegations made in Plaintiff’s Amended Petition. *See* Defendant’s Original Answer to Plaintiff’s First Amended Petition, attached as **Exhibit D**.

3. Pursuant to 28 USC § 1446(a) and Local Rule 81, a copy of all process, pleadings, and orders filed in the State Court Action.

4. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Allied will give written notice of the removal to Plaintiff through his attorney of record, and to the clerk of the 125th Judicial District of Harris County, Texas.

5. Pursuant to 28 USC §§ 1446(b)(1) and 1446(c)(1) this Notice of Removal has been timely filed within 30 days of service on Allied of Plaintiff’s Amended Petition and less than one year after the commencement of this action.

## **II. JURISDICTION**

6. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the matter is removable to this Court pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the properly joined parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

### **A. Diversity of Parties**

7. Plaintiff is domiciled in Harris County, Texas. *See Exhibit B*, ¶ 4. Pursuant to 28 U.S.C. § 1332(a), therefore, Plaintiff is a citizen of the State of Texas.

8. Allied Property and Casualty Insurance Company is organized under the laws of Ohio and maintains its principal place of business in Ohio. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Allied is a citizen of the State of Ohio.

9. Accordingly, there is complete diversity between the parties pursuant to 28 U.S.C. § 1332(a).

### **B. Amount in Controversy**

10. Plaintiff's Amended Petition states that Plaintiff seeks "damages within the jurisdictional limits of this Court not to exceed \$2,000,000 excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs." *See* Plaintiff's Amended Petition, *Exhibit B*, ¶ 48.

11. Plaintiff further seeks compensation for (1) actual and compensatory damages, (2) attorney's fees, (3) exemplary damages, (4) treble damages, and (5) costs. *See Exhibit B*, ¶ 30. Plaintiff has alleged that Allied's conduct was wrongful and done knowingly, entitling him to a trebling of actual damages under Texas Insurance Code Chapter 541. *See Exhibit B*, ¶ 22; Tex.

Ins. Code sections 541.002 & 541.152. Penalties, exemplary damages, and attorneys' fees are included as part of the amount in controversy.<sup>1</sup>

12. The amount in controversy plainly exceeds \$75,000, exclusive of interest and costs. *See Exhibit B*. Accordingly, the amount in controversy requirement of 28 U.S.C. § 1332(b) is satisfied.

### **III. CONCLUSION**

13. Removal of this action under 28 U.S.C. § 1441(b) is proper as the district courts of the United States have original jurisdiction over the matter pursuant to 28 U.S.C. 1332, and as all requirements for removal under 28 U.S.C. § 1446 have been met.

14. WHEREFORE, Defendant Allied Property and Casualty Insurance Company hereby provides notice that this action is duly removed.

Respectfully submitted,

/s/ Patrick M. Kemp

Patrick M. Kemp  
Texas Bar No. 24043751  
Southern District Bar No. 38513  
pkemp@smsm.com  
Segal McCambridge Singer and Mahoney  
100 Congress Avenue, Suite 800  
Austin, Texas 78701  
(512) 476-7834  
(512) 476-7832 – Facsimile

**ATTORNEY-IN-CHARGE FOR DEFENDANT  
ALLIED PROPERTY AND CASUALTY  
INSURANCE COMPANY**

---

<sup>1</sup> See *H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); see also *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

OF COUNSEL:

Robert G. Wall  
Texas Bar No. 24072411  
Southern District Bar No. 1117137  
rwall@smsm.com  
Segal McCambridge Singer and Mahoney  
100 Congress Avenue, Suite 800  
Austin, Texas 78701  
(512) 476-7834  
(512) 476-7832 – Facsimile

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been served upon the following counsel of record via certified mail/return receipt requested on this 1<sup>st</sup> day of August, 2016:

John D. Sheppard  
Nicholas A. Morrow  
Morrow & Sheppard LLP  
3701 Kirby Dr., Suite 840  
Houston, Texas 77098  
jsheppard@morrowsheppard.com  
nmorrow@morrowsheppard.com

**7196 9008 9111 1861 5560**

/s/ Patrick M. Kemp  
Patrick M. Kemp